The Owners of the Ship or Vessel 'Siti Ayu' and 'Melati Jaya' v Sarawak Oil Palm Sdn Bhd & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO Q–02–793 OF 2002
MOHD GHAZALI, HASHIM YUSOFF AND JAMES FOONG JJCA
26 OCTOBER 2005

Shipping and Navigation — Admiralty — Jurisdiction — Plaintiffs' claim within admiralty jurisdiction and defendants' counterclaim under normal civil jurisdiction — Whether defendants can maintain their counterclaim that is not within the admiralty jurisdiction in an action first commenced as an admiralty action — Supreme Court Act 1981 (UK) s 20

The defendants were the owner of two tugboats. The plaintiffs were the owner of the cargo in Tai Ho No 1 where the defendants' tugboats were engaged to tow the vessel. One of the tugboats experienced ingress of seawater in her engine room resulting in the release of the towrope fastened to Tai Ho No 1 where it was later grounded. The owner of Tai Ho No 1 then engaged a salvage firm to carry out salvage operation on Tai Ho No 1. Large swells were experienced resulting in the cargo being damaged by sea water sprayed onto it. The plaintiffs brought an admiralty action in the Miri High Court against the owner of Tai Ho No 1 for damages and Tai Ho No 1 was arrested. The plaintiffs commenced another admiralty action in the Miri High Court over the same incident against the defendants for negligence in failing to furnish seaworthy tugboats and the two tugboats were arrested at the defendants' private wharf. Responding to this admiralty action, the defendants entered unconditional appearance to challenge the plaintiffs' right of arrest of these two tugboats. Besides, it also filed a counterclaim against the plaintiffs for the wrongful arrest and detention of these two tugboats, claiming damages for loss of use of these vessels and its upkeep. The two claims were consolidated and the learned High Court judge delivered two separate judgments. In both of these cases, he dismissed the plaintiffs' claim. His reasons were: (1) for want of admiralty jurisdiction; and (2) in the event that he (the learned judge) had erred on the question of jurisdiction, then the plaintiffs' claim was statute barred. Aside from this, he also dismissed the defendants' counterclaim. The plaintiffs did not appeal against the decision. However, the defendants, dissatisfied with the dismissal of its counterclaim, appealed.

Held, allowing the appeal:

(1) The defendants' counterclaim did not fall within any of the provisions set out in relevant sections of s 20 of the Supreme Court Act 1981 of England or, for that matter, any other sections in the said Act. These claims of the defendants were certainly outside the ambit of the admiralty jurisdiction. In this respect, the court found that the learned High Court judge was correct in his conclusion pertaining to the issue of admiralty jurisdiction viz, the defendants' counterclaim was not within the ambit of the Admiralty Court (see para 23).

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(2) The court was faced with one additional factor, namely that of different jurisdictions: the plaintiffs' claim was within the admiralty jurisdiction whilst the defendants' counterclaim fell under the normal civil jurisdiction. Though there was a difference in jurisdiction, the court was of the view that the same principle governing the entertainment of counterclaim in an action as disclosed above applied. In this instant case, the court could not ignore the fact that even if the claim and counterclaim were to be tried separately, it would still be tried by a High Court judge at Miri. It would be more convenient for him to hear these actions together since the counterclaim, though of a different nature, arose out of one series of events. There could be no denial that substantial inconvenience and extra expenditure in time and cost would be incurred if these two sets of actions were to be tried separately (see para 29).

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(3) Though the two actions (plaintiffs' claim and the defendants' counterclaim) belong to two different jurisdictions, the trial judge should have blended these two jurisdictions for the sake of convenience and disposed off the counterclaim as a non-admiralty proceeding in an action that was originated from an admiralty proceeding (see para 31).

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[Bahasa Malaysia summary

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Defendan-defendan adalah pemilik dua kapal tunda. Plaintif adalah pemilik kargo Tai Ho No 1 di mana kapal-kapal tunda defendan-defendan digunakan untuk menunda kapal tersebut. Salah satu daripada kapal tunda tersebut dimasuki air laut dalam bilik enjinnya mengakibatkan tali tunda yang diikat kepada Tai Ho No 1 terlepas dan kemudiannya jatuh ke dasar laut. Pemilik Tai Ho No 1 kemudian telah melantik firma penyelamatan untuk menjalankan operasi menyelamatkan kapal Tai Ho No 1. Ombak besar melanda sehingga menyebabkan kerosakan pada kargo disebabkan air laut yang banyak melimpahinya. Plaintif-plaintif telah memulakan satu tindakan admiralti di Mahkamah Tinggi Miri terhadap pemilik Tai Ho No 1 untuk ganti rugi dan Tai Ho No 1 telah ditahan. Plaintif-plaintif telah memulakan satu lagi tindakan admiralti di Mahkamah Tinggi Miri berhubung kejadian yang sama terhadap defendan-defendan kerana kecuaian iaitu kegagalan menyediakan kapal tunda yang layar layak dan kedua-dua kapal tunda tersebut ditahan di dermaga persendirian defendan-defendan. Menjawab tindakan admiralti tersebut, defendan-defendan telah memasuki kehadiran tanpa syarat untuk mencabar hak penahanan plaintif-plaintif terhadap kedua-dua kapal tunda tersebut. Selain daripada itu, ia juga telah memfailkan satu tuntutan balas terhadap plaintif-plaintif kerana tangkapan dan penahanan salah kedua-dua kapal tunda tersebut, menuntut ganti rugi kerana kehilangan penggunaan kapal-kapal tersebut dan senggaraannya. Kedua-dua tuntutan tersebut telah disatukan dan hakim Mahkamah Tinggi telah menyampaikan dua penghakiman berasingan. Dalam kedua-dua kes, beliau telah menolak tuntutan plaintif-plaintif. Alasannya, adalah: (1) kerana ketiadaan bidang kuasa admiralti; dan (2) sekiranya beliau (hakim yang arif) terkhilaf berhubung persoalan bidang kuasa, maka tuntutan plaintif-plaintif adalah luput had masa. Selain daripada itu, beliau juga telah menolak tuntutan balas defendan-defendan. Plaintif-plaintif tidak merayu terhadap keputusan tersebut. Bagaimanapun,

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defendan-defendan, berasa tidak puas hati dengan penolakan tuntutan balasnya, telah mengemukakan rayuan. A

Diputuskan, membenarkan rayuan tersebut: B

(1) Tuntutan balas defendan-defendan tidak terangkum di bawah mana-mana peruntukan yang dinyatakan dalam bahagian relevan dalam s 20 Akta Mahakmah Agong 1981 England atau, seperkara itu, mana-mana seksyen lain dalam Akta tersebut. Tuntutan defendan-defendan sememangnya di luar bidang kuasa admiralti. Sehubungan itu, mahkamah mendapati hakim Mahkamah Tinggi yang bijaksana adalah betul dalam kesimpulannya berkaitan C persoalan bidang kuasa admiralti, di mana tuntutan balas defendan-defendan tidak terangkum di bawah bidang kuasa Mahkamah Admiralti (lihat perenggan 23).

(2) Mahkamah berhadapan dengan satu faktor tambahan, iaitu bidang kuasa yang berbeza: tuntutan plaintif-plaintif adalah dalam bidang kuasa admiralti D sementara tuntutan balas defendan-defendan terletak di bawah bidang kuasa sivil yang biasa. Meskipun terdapat bidang kuasa berbeza, mahkamah berpendapat bahawa prinsip sama yang mengawal pengendalian tuntutan balas dalam suatu tindakan seperti yang dinyatakan di atas adalah terpakai. Dalam kes semasa, mahkamah tidak boleh menidakkan fakta bahawa meskipun E tuntutan dan tuntutan balas tersebut didengar secara berasingan, ia masih akan dibicarakan oleh hakim Mahkamah Tinggi di Miri. Adalah lebih sesuai untuk beliau mendengar tindakan-tindakan tersebut bersama memandangkan tuntutan balas itu, meskipun berbeza sifatnya, timbul daripada satu rangkaian kejadian. Tidak boleh dinafikan bahawa ketidaksesuaian yang nyata dan perbelanjaan tambahan dari segi masa dan kos akan ditanggung jika kedua-dua F set tindakan tersebut dibicarakan secara berasingan (lihat perenggan 29).

(3) Meskipun kedua-dua tindakan tersebut (tuntutan plaintif-plaintif dan tuntutan balas defendan-defendan) terangkum di bawah bidang kuasa berbeza, hakim perbicaraan sepatutnya menggabungkan kedua-dua bidang kuasa G tersebut untuk memudahkan keadaan dan menyelesaikan tuntutan balas tersebut sebagai prosiding bukan admiralti dalam satu tindakan yang asalnya daripada prosiding admiralti (lihat perenggan 31).]

Notes

For cases on admiralty jurisdiction, see contract of carriage, see 11 *Mallal's Digest* (4th H Ed, 2002 Reissue) paras 1151–1187.

Cases referred to

Amon v Bobbett (1889) 22 QBD 543 (refd)
Cheapside; The (1904) P 339 (refd)
Shanghai Hall Ltd v Town House Hotel Ltd [1967] 1 MLJ 223 (refd) I

Legislation referred to

Courts of Judicature Act 1964 s 24(b)
Rules of High Court 1980 O 15 r 2

A Supreme Court Act 1981 [UK] ss 20, 21(1)

Appeal from: Admiraiti In Rem No MR 1 of 1991 (High Court, Miri)

B *KY Lin (Jason Wong with him) (Kadir Wong Lin & Co) for the appellant.*
Amri Krishnalingam (Mathew Kurien and Leonard Shim with him) (Reddi & Co) for the respondent.

James Foong JCA (delivering judgment of the court):

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BACKGROUND

[1] The defendants are and were at all material times the owners and persons in control or possession of two tugboats: 'Siti Ayu' and 'Melati Jaya'.

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[2] On 28 November 1988, these two tugboats were engaged to tow a vessel known as 'Tai Ho No 1' out of Miri Port, through Miri Bar, in Sarawak. On board of Tai Ho No 1 were 7565 bags of palm kernels ('the cargo') belonging to the first plaintiff, as consignor, for delivery to the second plaintiff, as consignee.

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[3] At about 2300 hours on 28 November 1988, tugboat Siti Ayu experienced ingress of seawater in her engine room where the glass panel was broken. This resulted in one of the tugboats to release the towrope fastened to Tai Ho No 1 before the latter could clear the shallow channel of the route. Without assistance, Tai Ho
F No 1 was slowly pushed by the waves to the bank of the river where she was grounded.

[4] The owner of Tai Ho No 1 then engaged a salvage firm, Sealink Sdn Bhd, to carry out salvage operation on Tai Ho No 1. In order to lighten the Tai Ho No 1,
G for re-floating, a barge was brought alongside Tai Ho No 1 to re-transfer the cargo on board. While this forced discharge operation was undertaken, on 8 December 1988, large swells were experienced resulting in 552 bags of the cargo being damaged by seawater sprayed onto it.

H **[5]** On 20 December 1989, the plaintiffs brought an admiralty action in the Miri High Court against the owner of Tai Ho No 1 for damages amounting to RM157,647.30. This action is registered as MR4 of 1989.

[6] In consequent to this action, Tai Ho No 1 was arrested. It was only released upon the owner depositing a sum of RM200,000 with its solicitors who, undertook
I to pay the plaintiffs, if the plaintiffs succeed in their claim for RM157,647.30.

[7] On 17 August 1991, the plaintiffs commenced another admiralty action in the Miri High Court over the same incident. This time, against the defendants for negligence in failing to furnish seaworthy tugboats for the purpose engaged, or

alternatively for failing to exercise reasonable skill and care in its undertaking. And the amount claimed is also for RM157,647.30. This action is registered as MR1 of 1991.

[8] Based on this action, the plaintiffs arrested Siti Ayu and Melati Jaya from the defendants' private wharf.

[9] Responding to this admiralty action MR1 of 1991, the defendants on 14 August 1992, entered unconditional appearance to challenge the plaintiffs' right of arrest of these two tugboats. Besides, it also filed a counterclaim against the plaintiffs for the wrongful arrest and detention of these two tugboats, claiming damages for loss of use of these vessels and its upkeep (since the plaintiff has failed to tow them to a marine wharf as ordered by the Senior Assistant Registrar of the Miri High Court during one of the many interlocutory applications taken out in this action).

[10] The two admiralty actions (MR4 of 1989 and MR1 of 1991) were consolidated and heard before Sulaiman Daud J. The learned judge delivered two separate judgments. In both of these cases, he dismissed the plaintiffs' claim. His reasons, as disclosed in his judgment in MR1 of 1991, were: (a) for want of admiralty jurisdiction and; (b) in the event that he (the learned judge) had erred on the question of jurisdiction, then the plaintiffs' claim is statute barred. Aside from this, he also dismissed the defendants' counterclaim (in action MR1 of 1991). The grounds advanced for this rejection are:

> The (defendants') counterclaim herein is embodied and form an integral part of the defence to an admiralty action in rem and is therefore in the nature of an admiralty action as well. As earlier stated the admiralty jurisdiction of this court is as is had by the High Court of Justice in England. Such jurisdiction is provided in s 20 of the 1981 Act. For this court to exercise its admiralty jurisdiction the matter to be heard and determined by the court must be one of the claim provided in the said s 20, including sub-s (2) thereof. The court would be acting without jurisdiction if the claim is not within the ambit of the said section.
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> Upon close scrutiny of the matters provided in the said s 20, including those under paragraphs (d) of the sub-s (2) thereof which relate to 'claim for damages received by a ship', it is my finding that none of the cause or matter of the defendants' counterclaim against the plaintiffs herein fall within the ambit of the said s 20, I therefore hold that this court has no admiralty jurisdiction to hear and determine the defendants' counterclaim against the plaintiffs. Accordingly I also dismiss the defendants' counterclaim with costs.

[11] The plaintiffs did not appeal against the decision handed down in both MR4 of 1989 and MR1 of 1991. However, the defendants, dissatisfied with the dismissal of its counterclaim, appealed. This is the appeal before us.

CONSENT OF THE PARTIES

[12] Before we commenced hearing the merits of this appeal, we were informed by Mr Lin, counsel for the defendants, that since the plaintiffs, in their written submission, have agreed that the court of first instance which heard this case has jurisdiction and all that is required from this appellate court is a directive to revert

this case back to the High Court at Miri to decide on the issues of liability and quantum of the defendants' counterclaim. Though Mr Arun, counsel for the plaintiffs, confirmed what Mr Lin said on the issue of jurisdiction, he, however, differs from the approach suggested by Mr Lin in sending this counterclaim back to the court of first instance to decide. He stressed that since this court (Court of Appeal) is possessed of power to decide on both liability and quantum of the defendants' counterclaim by relying on the notes of evidence recorded by the trial judge which is in the appeal records, this court can proceed to dispose off this case without the necessity of reverting this matter once again to the court below.

[13] But before this court accepts the mutual agreement of the parties that the trial court has jurisdiction to entertain the defendants' counterclaim and decides on which of the two proposed approaches to adopt, we requested counsel from both sides to enlighten us on the ambit on their mutual agreement: that the court of first instance that heard this defendants' counterclaim has jurisdiction to do so. Does it mean that: (a) the said court of first instance has admiralty jurisdiction to hear the defendants' counterclaim or; (b) it has normal civil jurisdiction (as differs from that of admiralty jurisdiction) to hear the defendants' counterclaim? This clarification is necessary in view of the learned High Court judge's grounds of decision where he found the defendants' counterclaim is in the nature of an admiralty action but not falling within s 20 of the Supreme Court Act 1981 of England ('1981 Act') to allow the court with admiralty jurisdiction to hear the matter.

[14] Upon these questions posted, Mr Lin first submitted that he considers the defendants' counterclaim falling within the jurisdiction of the admiralty jurisdiction since it is associated with the arrest of the two tugboats. But if this proposition is not acceptable to this appellate court, then he would respect the ruling of the trial judge that the defendants' counterclaim is not within the jurisdiction of the Admiralty Court but yet maintaining that the defendants could still pursue their counterclaim as a normal civil claim within an action that is originated by way of an admiralty action. After all, according to him, the Admiralty Court where this action commenced is a part of or a division of the High Court of Sabah and Sarawak at Miri, and it would be the same judge who would be hearing the plaintiffs' claim in an admiralty action and the defendants' counterclaim (which is not an admiralty action).

[15] Mr Arun, on the other hand, seemed to have no firm conviction over this proposition except to stress that this court should undertake the exercise in deciding on the defendants' counterclaim based on the appeal records before this court.

THE BASIC LAW

[16] To appreciate Mr Lin's initial stand on the questions posted by this court, it is necessary to examine whether the learned High Court judge is right in his finding that the defendants' counterclaim does not fall within the jurisdiction of the Admiralty Court.

[17] In admiralty action, a claim by the plaintiff or the defendant in his counterclaim can be either in rem or in personam. The governing provision for this is s 21(1) of the 1981 Act. Though this is an English Act of Parliament, it is applicable to Malaysia by virtue of s 24(b) of the Courts of Judicature Act 1964 which states:

> Without prejudice to the generality of s 23 the civil jurisdiction of the High Court shall include — the same jurisdiction and authority in relation to matters of admiralty as is had by the High Court of Justice in England under the United Kingdom Administration of Justice Act 1981.

[18] An action in rem is, as the name suggests, an action against a thing. Most common is the ship but at times against other property relevant to the dispute rather than against a person. In an admiralty proceeding in rem, the plaintiff commences his action by serving the process on the ship or other property and taking steps to have an officer of the court to arrest the ship or property and holds it in place. If the owner of the ship or property does nothing, the whole action may continue against the ship or property which may end up being appraised and sold by an order of the court to satisfy the victorious litigant.

[19] An action in personam in an admiralty action is against a person, for example the ship owner. Though this procedure is simpler it is not as attractive. Although it might not be difficult to find the defendant within the jurisdiction of the court and serve on him the relevant papers it is quite another thing to obtain satisfaction on the judgment against him if he has no assets or his assets are not within reach.

[20] The extent of the admiralty jurisdiction of the Admiralty Court is set out in s 20(1) of the 1981 Act. It states as follows:

> (1) The Admiralty jurisdiction of the High Court shall be as follows, that is to say —
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> (a) jurisdiction to hear and determine any of the questions and claims mentioned in sub-s (2);
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> (b) jurisdiction in relation to any of the proceedings mentioned in subsection (3);
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> (c) any other Admiralty jurisdiction which it had immediately before the commencement of this Act; and
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> (d) any jurisdiction connected with ships or aircraft which is vested in the High Court apart from this section and is for the time being by rules of court made or coming into force after the commencement of this Act assigned to the Queen's Bench Division and directed by the rules to be exercised by the admiralty court.

[21] Then under s 20(2) of the 1981 Act, a comprehensive list of 'maritime claims' are spell out as follows:

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(2) The questions and claims referred to in sub-s (1)(a) are —

(a) any claim to the possession or ownership of a ship or to the ownership of any share therein;

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(b) any question arising between the co-owners of a ship as to possession, employment or earnings of that ship;

(c) any claim in respect of a mortgage of or charge on a ship or any share therein;

(d) any claim for damage received by a ship;

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(e) any claim for damage done by a ship;

(f) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or in consequence of the wrongful act, neglect or default of —

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(i) the owners, charterers or persons in possession or control of a ship; or

(ii) the master or crew of a ship, or any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible, being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of goods on, in or from the ship, or in the embarkation, carriage or disembarkation of persons on, in or from the ship;

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(g) any claim for loss of or damage to goods carried in a ship;

(h) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;

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(i) any claim in the nature of salvage (including any claim arising by virtue of the application, by or under (s 87 of the Civil Aviation Act 1982), of the law relating to salvage to aircraft and their apparel and cargo);

(j) any claim in the nature of towage in respect of a ship or anaircraft;

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(k) any claim in the nature of pilotage in respect of a ship or an aircraft;

(l) any claim in respect of goods or materials supplied to a ship for her operation or maintenance;

(m) any claim in respect of the construction, repair or equipment of a ship or in respect of dock charges or dues;

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(n) any claim by a master or member of the crew of a ship for wages (including any sum allotted out of wages or adjudged by a superintendent to be due by way of wages);

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(o) any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship;

(p) any claim arising out of an act which is or is claimed to be a general average act;

(q) any claim arising out of bottomry;

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(r) any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried, in a ship, or for the restoration of a ship or any such goods after seizure, or for droits of Admiralty.

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[22] However for admiralty claims in personam in respect of collusion and similar cases a set of conditions laid down in s 22 of the 1981 Act must be first satisfied before they could be entertained.

[23] Is the defendants' counterclaim within the admiralty jurisdiction? Having set out the extent of the admiralty jurisdiction and maritime claims under the 1981 Act, we now examine the nature of the defendants' counterclaim. Principally, the cause of action therein is for wrongful arrest and detention of the two tugboats. Then subsequently, by way of amendments, claims for damages in respect of the failure of the plaintiffs to comply with the order issued by the senior assistant registrar in respect of insuring and maintenance of the two tugboats were added. But it is our view that none of these causes of action fall within any of the provisions set out in relevant sections of the 1981 Act or, for that matter, any other sections in the said Act. These claims of the defendants, we find, are certainly outside the ambit of the admiralty jurisdiction. In this respect, we find that the learned High Court judge was correct in his conclusion pertaining to the issue of admiralty jurisdiction viz, the defendants' counterclaim is not within the ambit of the Admiralty Court.

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[24] But this matter does not end here. The question that follows is: can the defendants maintain their counterclaim that is not within the admiralty jurisdiction in an action first commenced as an admiralty action, like in this case? For this, we examined O 15 r 2 of the Rules of High Court 1980 ('the RHC') which provides:

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> The counterclaim must be one which the court has jurisdiction to entertain as a separate action and must be for a claim for which the defendant could sue, as plaintiff, the persons against the counterclaim is set up.

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[25] In *Amon v Bobbett* (1889) 22 QBD 543, Bowen LJ declares:

> A counterclaim is a separate and independent action which is to be tried together with the original action.

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[26] Expanding further, the learned author in *Ordgers on High Court Pleading and Practice* (23rd Ed) at p 243 declares:

> It (counterclaim) need not relate to or be any way connected with the plaintiffs claim, or arise out of the same transaction. It need not be the same nature as the original action (per Fry J in *Beddall v Maitland* (1881) 17 Ch D at p 181) or even analogous thereto. If the defendant has any valid cause of action, legal or equitable, against the plaintiff, there is no necessity for him now to bring a cross-action, unless his counterclaim is of such a nature that it cannot conveni

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[27] This statement is accepted in our courts: *Shanghai Hall Ltd v Town House Hotel Ltd* [1967] 1 MLJ 223 at p 228.

[28] From the above established legal principles, we can safely say that unless the counterclaim is of a nature that cannot be conveniently tried by the same tribunal then such claim, though not related to or by any way connected with the plaintiffs' claim or even arise out of the same transaction or of the same nature as the plaintiffs' claim, can be maintained in the same action.

[29] But here we are faced with one additional factor namely, that of different jurisdictions: the plaintiffs' claim is within the admiralty jurisdiction whilst the defendants' counterclaim falls under the normal civil jurisdiction. Though there is a difference in jurisdiction, we are of the view that the same principle governing the entertainment of counterclaim in an action as disclosed above applies. In this instant case, we cannot ignore the fact that even if the claim and counterclaim are to be tried separately it would still be tried by a High Court judge at Miri. It would be more convenient for him to hear these actions together since the counterclaim, though of a different nature, arose out of one series of events. There can be no denial that substantial inconvenience and extra expenditure in time and cost would be incurred if these two sets of actions were to be tried separately. This view seems to find support in *The Cheapside* (1904) P 339 where the facts are these:

[30] The plaintiffs are owners of tug boat Oscar Dickson. They filed an admiralty action for salvage against the defendant, the owner of a steamship Cheapside for refusing to pay salvage charges incurred when Oscar Dickson assisted Cheapside to re-float when the latter was grounded several times in the course of negotiating down river. The defence was one of denial of such salvage assistance and if rendered such charges was included in the bill tendered by the charterers. Aside from this defence, there was a counterclaim against the plaintiffs as owners of Oscar Dickson for damages suffered as a result of the detention of the defendants' vessel by the plaintiffs in breach of two chartered parties of previous dates, events unrelated to the current claim. Though agreeing that the defendants' counterclaim is not within the jurisdiction of the Court of Admiralty (whilst the plaintiffs' claim is) Collins MR has this to say:

> However, this point has been raised before, and it has been decided that the judge of the Court of Admiralty does not cease to be a judge of the High Court because he is judge of the Court of Admiralty, and although as judge of the Court of Admiralty he may have no jurisdiction in such a case as this in personam, as judge of the High Court he has, and whether or not he can blend those two jurisdictions is a matter for his discretion, subject to review by this court.
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> In this case, the judge of the Court of Admiralty has endeavoured to do justice by not dividing the two jurisdictions, but by availing himself of the fact that he has a double jurisdiction, which will enable him to do justice in this way... he would be abundantly justified in exercising it in this case... In my opinion the learned judge has properly exercised his discretion and was within his jurisdiction in so doing.

[31] Applying this same rational, we are of the view that though the two actions (plaintiffs' claim and the defendants' counterclaim) belong to two different

jurisdictions, the trial judge should have blended these two jurisdictions for the sake of convenience and disposed off the counterclaim as a non-admiralty proceeding in an action that is originated from an admiralty proceeding.

CONCLUSION

[32] Having made these findings, we are of the opinion that since the defendants' counterclaim involves the finding of liability and quantum it would be appropriate for the court of first instance to decide on such matters. The appellate court should confine itself to hearing appeals from the court below rather than engaging itself on matters which the court of first instance is most suited to perform.

[33] For reasons aforesaid, we hereby allow this appeal of the defendants' with costs and directs that the defendants' counterclaim be tried by the court of first instance.

Appeal allowed.

Reported by Sally Kee